

Decision 03-06-048 June 19, 2003

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Joint Application of Matrix Telecom, Inc. and
International Exchange Communications, Inc. for
Approval of the Transfer of Certain Assets and
Related Transactions and a Waiver of Applicable
Anti-Slamming Rules Pursuant to Sections 851
and 854(a) of the California Public Utilities Code.

Application 03-03-012
(Filed March 11, 2003)

OPINION AUTHORIZING TRANSFER OF ASSETS

Summary

This decision grants the joint application of Matrix Telecom, Inc. (Matrix) and International Exchange Communications, Inc. (IEC) for approval of the transfer of the assets of IEC to Matrix.

Parties to the Transaction

Matrix is a Texas corporation authorized to do business in California. Its principal place of business is located at 300 North Meridian, Oklahoma City, OK 73107. On December 19, 1990 we granted Matrix a Certificate of Public Convenience and Necessity (CPCN) to operate in California as a limited facilities-based and resale provider of interexchange services. IEC is a Delaware corporation authorized to do business in California. Its principal place of business is 500 Airport Boulevard, Suite 340, Burlingame, CA 94010. On June 29, 1998 we granted IEC a CPCN to operate as a limited facilities-based and resale provider of interexchange services.

Proposed Transaction

On December 29, 2000, IEC entered into a Management Services Agreement (MSA) with Matrix pursuant to which Matrix has been providing telecommunications services to IEC's customer base under IEC's supervision. The MSA contemplated that Matrix would purchase IEC's assets at a later date. On January 4, 2001 IEC filed a voluntary petition under chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court, Northern District of California, San Francisco Division. After extensive negotiations, on August 12, 2002, Matrix and IEC reached an agreement regarding the sale of IEC's assets to Matrix that was formalized in a settlement agreement (Settlement) that was approved by the Bankruptcy Court on December 20, 2002. The Settlement provides that Matrix will pay IEC \$600,000 for its assets, which consist primarily of its customer base, customer records, accounts receivable, trademarks and other intellectual property. A condition of both the Settlement and the Bankruptcy Court order approving the Settlement is that the transaction must be approved by the Commission.

Pursuant to the proposed transaction, Matrix will succeed to the current business and operations of IEC. The applicants represent that the transaction will be transparent to customers because Matrix is already providing all of the telecommunications and billing services received by IEC customers via the MSA. The applicants do not anticipate any changes in rates, terms, and conditions of service as a result of the transaction.

Discussion

Pub. Util. Code § 851 requires Commission authorization before a public utility may "sell, lease, assign or otherwise dispose of ...property necessary or useful in the performance of its duties to the public..." Pub. Util. Code § 854

requires Commission authorization before a company may “merge, acquire, or control . . . any public utility organized and doing business in this state . . .” The purpose of this and related sections is to enable the Commission, before any transfer of public utility property is consummated, to review the situation and to take such action, as a condition of the transfer, as the public interest may require. (San Jose Water Co. (1916) 10 CRC 56.)

Because Matrix currently holds a CPCN to offer interexchange services in California, it is unnecessary for us to review its qualifications to receive a CPCN.

Nonetheless, Matrix has supplied under seal financial statements that demonstrate that it would meet the financial qualification requirements were this a de novo application. Similarly, we need not investigate whether Matrix has sufficient technical expertise to operate as an interexchange carrier, since it is already doing so.

After the transaction is completed, IEC’s current customers will receive their long distance service from a financially stronger phone company in place of their currently bankrupt service provider. In addition, the transaction will be transparent to the customers with no change in rates or service. Because the proposed transaction provides net benefits to the public it is in the public interest and we will grant it.

The applicants requested that in addition to approving the asset transfer we should grant a waiver of applicable anti-slamming regulations. We do not believe the transaction falls within our anti-slamming policy. After the transaction, the customers will be receiving the same service from the same provider that has been responsible for their service for more than a year. The only difference is that Matrix will be delivering that service as the owner of the assets rather than as an agent of IEC. The application includes a form of notice to

customers that adequately explains the transaction and provides a toll-free number for those customers who have questions about it or who may wish to change their long distance provider. No further action is required.

Request to File Under Seal

The applicants request that the financial information filed with the application be filed under seal. The financial information consists of Matrix's income statement and balance sheet as of September 30, 2002. The applicants represent that the information is proprietary and sensitive. The information, if revealed, would place Matrix at an unfair business disadvantage. We have granted similar requests in the past and will do so here.

Procedural Matters

In Resolution ALJ 176-3110, dated April 3, 2003, the Commission preliminarily categorized this application as ratesetting, and preliminarily determined that hearings were not necessary. No protests have been received. Therefore, a public hearing is not necessary, and it is not necessary to alter the preliminary determinations.

This is an uncontested matter in which the decision grants the requested relief. Therefore, pursuant to Section 311(g)(2) of the Public Utilities Code, the otherwise applicable 30-day period for public review and comment is being waived.

Assignment of Proceeding

Geoffrey F. Brown is the Assigned Commissioner, and Karl J. Bemesderfer is the assigned Administrative Law Judge in this proceeding.

Findings of Fact

1. On December 19, 1990 Matrix was granted a CPCN to operate in California as a limited facilities-based and resale provider of interexchange services.

2. On June 28, 1998 IEC was granted a CPCN to operate in California as limited facilities-based and resale provider of interexchange services.

3. On December 29, 2000 Matrix and IEC entered the MSA pursuant to which Matrix provides interexchange telephone service, billing and repair service to the customers of IEC, as an agent of IEC.

4. On January 4, 2001 IEC filed a voluntary petition under chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court, Northern District of California, San Francisco Division.

5. On August 12, 2002 Matrix and IEC entered into the Settlement that provided for the sale to Matrix of the assets of IEC for a purchase price of \$600,000.

6. On December 20, 2002, the Bankruptcy Court entered a sale order authorizing IEC to consummate the proposed asset sale to Matrix, subject to receipt of the required regulatory approvals.

7. As a result of the transaction, Matrix will acquire all or substantially all of the assets of IEC, consisting primarily of the customer base, business records, accounts receivable, trademarks and other intellectual property of IEC.

8. Customers will continue to receive service under the same rates, terms, and conditions of service after the transaction.

9. The transaction will provide the customers of IEC with a financially stronger long distance phone company.

10. Notice of this application appeared on the Commission's Daily Calendar on Friday, March 14, 2003.

11. There were no protests to this application.

12. No hearings are necessary.

13. Public disclosure of the financial information filed under seal would place Matrix at an unfair business disadvantage.

Conclusions of Law

1. The transaction provides net benefits to the public and is in the public interest; therefore it is not adverse to the public interest

2. This transaction is not subject to “anti-slamming” provisions of the Public Utilities Code.

3. The applicant’s request to file financial information under seal should be granted for two years.

4. In order to avoid delaying this transaction, the approval of the application should be made effective immediately.

O R D E R

IT IS ORDERED that:

1. Pursuant to Public Utilities Code Sections 851 and 854, the joint application of Matrix Telecom, Inc. and International Exchange Communications, Inc. for approval of the transfer of the assets of IEC to Matrix is approved.

2. The applicants’ request to have the financial information filed with the application kept under seal is granted for two years from the effective date of this decision. During that period the information shall not be made accessible or disclosed to anyone other than the Commission staff except on the further order or ruling of the Commission, the Assigned Commissioner, the assigned Administrative Law Judge (ALJ), or the ALJ then designated as Law and Motion Judge.

3. If the applicants believe that further protection of the information kept under seal is needed, they may file a motion stating the justification for further

withholding of the information from public inspection, or for such other relief as the Commission rules may then provide. This motion shall be filed no later than one month before the expiration date.

4. This application is closed.

This order is effective today.

Dated June 19, 2003, at San Francisco, California.

MICHAEL R. PEEVEY
President

CARL W. WOOD
LORETTA M. LYNCH
GEOFFREY F. BROWN
SUSAN P. KENNEDY
Commissioners